

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

William A. Ebnet,

Complainant,
vs.

ORDER OF DISMISSAL

Buffalo-Hanover-Montrose
Schools,

Respondent.

On November 26, 2007, William A. Ebnet filed a Complaint with the Office of Administrative Hearings alleging that the Respondent violated Minn. Stat. § 211B.11, subd. 1.¹ This provision prohibits the display of campaign materials at or near the polling place on election day.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 26, 2007, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to Respondent on November 27, 2007.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a prima facie violation of Minn. Stat. § 211B.11. Therefore, the Complaint is dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by William A. Ebnet against Buffalo-Hanover-Montrose Schools is DISMISSED.

Dated: November 28, 2007

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

¹ The Complaint, dated November 15, 2007, was addressed to the former Office of Administrative Hearing (OAH) address in Minneapolis. OAH received the Complaint at its new St. Paul address on November 26, 2007.

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § 14.63 to 14.69.

MEMORANDUM

This campaign complaint concerns the November 6, 2007, election. According to the Complaint, there were three school district referenda on the ballot in the Buffalo-Hanover-Montrose School District, No. 877 (District). The Complainant alleges that the District posted a sign on the exterior of the Buffalo Community Middle School (which served as a polling place) that encouraged voters to vote in favor of the three school referenda. The sign contained the word “vote” written in capital letters. Under the word “vote,” it read “Buffalo-Hanover-Montrose Schools Making a Difference!” In small print at the bottom of the sign were the words “Community Education Citizenship Project – Buffalo-Hanover-Montrose Schools.” The sign was posted approximately twenty feet from the entrance to the middle school.² The Complainant alleges the sign was posted in violation of Minn. Stat. § 211B.11.

Minn. Stat. § 211B.11 prohibits the display of campaign materials or the solicitation of voters at or near the polling place on election day. Section 211B.11, subd. 1, provides in part:

Soliciting near polling places. A person may not display campaign material, post signs, ask, solicit, or in any manner try to induce or persuade a voter within a polling place or within 100 feet of the building in which a polling place is situated, or anywhere on the public property on which a polling place is situated, on primary or election day to vote for or refrain from voting for a candidate or ballot question.

“Campaign material” is defined as “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news or editorial comments by news media.”³

The Administrative Law Judge concludes that the Complaint fails to state a prima facie violation of Minn. Stat. § 211B.11, subd. 1. This provision prohibits the display of campaign material or the solicitation of voters to vote a certain way at or near the polling place on election day. The sign posted outside the school did not advocate voting either for or against the ballot question. Rather the sign

² See photos attached to Complaint.

³ Minn. Stat. § 211B.01, subd. 2.

merely encouraged the general act of voting. The sign included the name of the school district and its motto, "Making a Difference!"⁴ but the names and motto do not advocate voting either for or against the school referenda. The sign did not refer to a specific candidate or mention the referenda in any way. The sign does not attempt to persuade or induce voters to vote in favor of the referenda. Instead, it is a neutral posting, encouraging the general act of voting, permissible under Minn. Stat. § 211B.11.

The Complainant fails to allege a prima facie violation of Minn. Stat. § 211B.11 and it is dismissed.

K. D. S.

⁴ The District's website, <http://www.bhmschools.org>, includes the words "Making a Difference" as a header on every page within the site. It does not appear to be a slogan associated specifically with the levy requests.